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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,158	11/13/2001	Earl J. Votolato	SPELL-004C	8649
34284	7590	07/23/2004		EXAMINER
ROBERT D. FISH; RUTAN & TUCKER, LLP P.O. BOX 1950 611 ANTON BLVD., 14TH FLOOR COSTA MESA, CA 92628-1950				PAYER, HWEI SIU CHOU
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 07/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/010,158	VOTOLATO, EARL J.
	Examiner	Art Unit
	Hwei-Siu C. Payer	3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 4-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 and 4-7 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

Detailed Action

Claims Rejection – 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horning, Jr. (U.S. Patent No. 5,007,171) in view of Pankonin (U.S. Patent No. 2,033,050) and Dieringer (U.S. Patent No. 5,438,759).

Horning, Jr. discloses a bag opener (Fig.7) comprising first and second arms (13,14) having exterior surfaces extending from a common bridge; the first arm (13) carrying a cutting surface (29) on an exterior surface (15) facing the second arm (14); the second arm (14) carrying a receiving surface (28) that cooperates with the cutting surface (29) to make a cut through a portion of a bag when the first and second arms (13,14) are opposed about the bag; and wherein the arms (13,14) and the bridge are fabricated as a single piece of plastic (see lines 1-2 of abstract) substantially as claimed except the exterior surfaces of the first and second arms (13,14) are not concaved, and the first and second arms (13,14) are not wider than the bridge.

Pankonin shows a hand-held tool (Fig.5) comprising first and second arms (20,21) having exterior surfaces extending concavely from a common bridge (22).

It would have been obvious to one skilled in the art to modify the Horning, Jr. reference by making the exterior surfaces of the first and second arms (13,14) concaved to enhance manual grasping of the bag opener as taught by Pankonin.

Dieringer shows a hand-held tool comprising two arms (18,20) extending from a common bridge (16) and wider than the bridge (16).

It would have been obvious to one skilled in the art to further modify the Horning, Jr. reference by making the first and second arms (13,14) wider than the common bridge to facilitate receiving a user's fingers and thumb as taught by Dieringer.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Horning, Jr. (U.S. Patent No. 5,007,171), Pankonin (U.S. Patent No. 2,033,050) and Dieringer (U.S. Patent No. 5,438,759) as applied to claim 4 above, and further in view of Braatz (U.S. Patent No. 5,103,562).

The bag opener of Horning, Jr. as modified shows all the claimed structure except it is silent about the material the blade (29) is made of.

Bratts discloses a bag opener comprising a metal blade (see column 2, lines 25-30).

It would have been obvious to one skilled in the art to further modify Horning, Jr. by making the blade (29) out of metal to resist wear as taught by Bratts.

4. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (U.S. Design Patent No. 276,786) in view of Pankonin (U.S. Patent No. 2,033,050) and Dieringer (U.S. Patent No. 5,438,759).

Chen shows a bag opener substantially as claimed except the exterior surfaces of the first and second arms are not concaved, and the first and second arms are not wider than the bridge.

Pankonin shows a hand-held tool (Fig.5) comprising first and second arms (20,21) having exterior surfaces extending concavely from a common bridge (22).

It would have been obvious to one skilled in the art to modify Chen making the exterior surfaces of the first and second arms concaved to enhance manual grasping of the bag opener as taught by Pankonin.

Dieringer shows a hand-held tool comprising two arms (18,20) extending from a common bridge (16) and wider than the bridge (16).

It would have been obvious to one skilled in the art to further modify Chen by making the first and second arms wider than the common bridge to facilitate receiving a user's fingers and thumb as taught by Dieringer.

Prior Art Citations

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hall and Votolato are cited as art of interest.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 703-308-

1405. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for official communications and 703-746-3293 for proposed amendments.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



H Payer
July 20, 2004

Hwei-Siu Payer
Primary Examiner